

Name Rodriguez D. Benjamin
 Address R. J. Donovan Correctional Facility
F2-9-231/ P.O. Box 799002
San Diego, CA. 92179-9002
 CDC or ID Number F 72457

2254	✓	1983
FILING FEE PAID		
Yes		No ✓
PETITION FILED		
Yes		No ✓
COPIES SENT TO		
Court	✓	ProSe

MC-275

FILED

MAY 12 2008

CLERK, U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 BY [Signature] DEPUTY

United States District Court
Southern District of California
 (Court)

<u>Benjamin D. Rodriguez</u> Petitioner	vs.	<u>Warden- HERNANDEZ, R.J. Donovan</u> Respondent
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PETITION FOR WRIT OF HABEAS CORPUS

08 CV 0856 LAB RBB

No.

(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court [as amended effective January 1, 2007]. Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

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This petition concerns:

- ☒ A conviction
 ☐ Parole
☒ A sentence
 ☐ Credits
☐ Jail or prison conditions
 ☐ Prison discipline
☐ Other (specify): _____

1. Your name: BENJAMIN D. RODRIGUEZ
2. Where are you incarcerated? R.J. DONAVAN Correctional Facility
3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

N/A.

- b. Penal or other code sections: 288

- c. Name and location of sentencing or committing court: South County Division
500 3RD Ave. Chula Vista, California.

- d. Case number: No.: SCS 200483 / San Diego Superior Court Case.

- e. Date convicted or committed: May, 3, 2008. ? or a month before.

- f. Date sentenced: May, 3, 2008 ← By the judge.

- g. Length of sentence: 20 years with 9 Strikes.

- h. When do you expect to be released? March 2, 2023.

- i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:

N/A. ?

4. What was the LAST plea you entered? (check one)

☐ Not guilty
 ☒ Guilty
 ☐ Nolo Contendere
 ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have? N/A.

☐ Jury
 ☐ Judge without a jury
 ☐ Submitted on transcript
 ☐ Awaiting trial

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6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

Abuse of 1385 Discretion, and Illegal sentencing Arbitration, 8th Amendment right Violation's, 6th and 14th Amendment right Violation's, Points and Authorities. People V. Garcia (1999) 4th Dis. CAD.

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

California penal Code: 1385 Discretion Case LAW. People V. Garcia (1999). I Was convicted and sentenced to 20 yrs. with 9 Strikes, This is indeed a 14th Ame. right Violation. An 8th Ame. right violation as well as a 6th Ame. right Violation: This is a flagrant abuse of 1385 Discretion, The 9th circuit affirmed and the supreme court upheld and severely cautioned the 4th and 2nd District as to these Discretion abuses, figuratively this an unfair and Illegal sentence Structer. The trial Court showed its excercising of 1385 Disc. in a arbitrary, capricious or patently absurd manner that resulted in a Illegal Sentencing Structer. Also there was No Emphasis placed on the fact this was a first offense there by blatantly disregarding the 9th circuit appeal to the second district and the 4th District, revealing the enevadibility of reversal or meritorious grounds for reversal, the caution was placed on the 4th District to reveal a absurd pattern of 1385 discretion abuses.

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

See above. 

7. Ground 2 or Ground _____ (if applicable):

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a. Supporting facts: 8th Amendment right Violation:

As a first offense the sentencing Judge overarched his judicial power's. No where in the history of California Sentencing Law is there a case where a defendant being a first termor has entered into Arbitration as to 9 Strikes actually Sticking or Being a permanent pact of a plea agreement: SE: wilding V. State Of California - (1996) 4th Dis. people V. Trower, 6 Dis. Mo, people V. Brown 2003 CAL. Lexis 6516 CCAL. Aug. 27. This also is a form of coercion in that this sentence "CURRENTLY" and any other conviction would be mandated: it is a due process error, this sentence must be set aside and reconsidered? it CANNOT and will Not Stand. This is reversable error and it is substantial. And the Law does mandate such relief as is equivalent to the damages accrued, in this particular instance, the defendant has suffered invariable under such illegal sentencing arbitration, in all actuality a misdemeanor offense was committed against the defendant if Not only for the sole purpose of future convictions this sentence must be vacated, and relief ordered respectfully.

b. Supporting cases, rules, or other authority:

See above ↑

7. Ground 2 or Ground 3. (if applicable):

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a. Supporting facts: 6th Amendment right violation.

Obviously court room administration was breached, fundamentally there is no court room administration if this inalienable right is obstructed, this is the Apex of "DUE PROCESS" the above mentioned right violations are ("INSEPERABLE") if all entities in the court of Law are Not working condusively for this protected right. There is and was No Justice, the sentence there fore must be reversed: This is also strongly up-held in the commission on Judicial performance, These flagrant right violation actually teeter on judicial misconduct, no ONE given Attorney could be oblivious to such blatant disregard to constitutionally protected rights. The supreme Court itself has severely Cautioned against such systematic Errosion of federally protected right's. We aduessed the procedural prerequisite for the declaration of against penal intrest exception.

b. Supporting cases, rules, or other authority:

See above. 1

7. Ground 2 or Ground 4. (if applicable):

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a. Supporting facts: 14th Amendment right Violation.

Clearly the sentencing ~~Structure~~ Structure indicates reversible error. The damage accrued is accumulative, and if not addressed incurable: my constitutionally protected & Inalienable guaranteed the 14th amendment right was violated when the sentencing Judge did not fulfill the statutes criteria to the fullest extent of the Law! Obviously I was not protected under my 14th amendment rights. This is nothing short of a due process Violation, again the sentence must be set aside and reconsidered RESPECTFULLY. Defendant would also pray the courts take into consideration the defendant has already accrued damage personally suffering under said arbitration. The damage accrued falls under multiple jurisdictions, it also falls under civil procedure; the defendant however shall be satisfied with the finding of reversible error, and sent back to the trial judge for a setting aside of this illegal arbitration and resentencing, with substantial relief. Any thing else under these circumstance would be unacceptable: The 4th district continues to blatantly disregard the 9th circuit Court of Appeals reprimands and Cautions.

b. Supporting cases, rules, or other authority:

And also ineffective assistance of trial counsel in advising me to take the plea.

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8. Did you appeal from the conviction, sentence, or commitment? ☒ Yes. ☐ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

Appellate Defenders, Inc. / Fourth Appellate District of Calif.

b. Result They said nothing to appeal. Date of decision: March, 8, 08

d. Case number or citation of opinion, if known: San Diego Superior Court Case No.: SCS 200483

e. Issues raised: (1) plea agreement.

(2) Right to interpreter.

(3) Incompetence of counsel.

f. Were you represented by counsel on appeal? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? ☐ Yes ☒ No. If yes, give the following information:

a. Result _____

b. Date of decision: _____

c. Case number or citation of opinion, if known: _____

d. Issues raised: (1) _____

(2) _____

(3) _____

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

Laymen at law, No access to the appropriate legal material, no understanding of the nature of these petitions, and or motions or writs of Habeas Corpus.

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

It would be impossible under the circumst.

b. Did you seek the highest level of administrative review available? ☐ Yes. ☒ No.

Attach documents that show you have exhausted your administrative remedies.

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12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☐ Yes. If yes, continue with number 13. ☒ No. If no, skip to number 15.

13. a. (1) Name of court: _____
 (2) Nature of proceeding (for example, "habeas corpus petition"): _____
 (3) Issues raised: (a) _____
 (b) _____
 (4) Result (Attach order or explain why unavailable): _____
 (5) Date of decision: _____
- b. (1) Name of court: _____
 (2) Nature of proceeding: _____
 (3) Issues raised: (a) _____
 (b) _____
 (4) Result (Attach order or explain why unavailable): _____
 (5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:
- _____
- _____

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

Not applicable in this present instance bring a laymen at law and having no Access to the appropriate legal materials.

16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:
- _____

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain:
- _____

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

Illegal sentencing arbitration and ineffective assistance of Counsel.

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

5-6-08

Benjamin D. Rodriguez
 (SIGNATURE OF PETITIONER)

JS44

(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1984, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM)

I (a) PLAINTIFFS

Benjamin D. Rodriguez

Hernandez
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *R.V.* DEPUTY

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

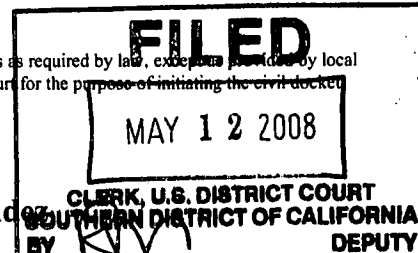
CIVIL COVER SHEET

2184 SEP 1984

FILING FEE PAID
Yes ☒ No ☒

IF MOTION FILED
Yes ☒ No ☒

COPIES SENT TO
Court ☒ Prisoner ☒



(b) COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Benjamin D. Rodriguez
PO Box 799002
San Diego, CA 92179
F-72457

ATTORNEYS (IF KNOWN)

'08 CV 0856 LAB RBB

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PT | DEF | | PT | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. <input type="checkbox"/> Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(e)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE 5/12/2008

SIGNATURE OF ATTORNEY OF RECORD

R. Muley